IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Alexandria,Virginia 22313-1450 on January 9, 2008.

Rosalie A. Centeno

Rosalie A. Centeno, Secretary

In the Application of John Greeson et al

Ser.No.: 10/659,840

Filed: September 11, 2003

For: Method and Mixture for Protecting Animals Against Pests

Art Unit: 1616

Examiner: Neil Levy

Commissioner of Patents
Alexandria, Virginia 22313-1450

MAIL STOP AF

Sir:

Appellant hereby appeals to the Board of Patent Appeals and Interferences from the decision dated June 18, 2003 of the Examiner finally rejecting claim 1, 2, 4-14 and 16-21.

1. According to the requirements of CFR 1.192, appellant herewith encloses an appeal brief in triplicate.

2. The fee of $510.00 was previously paid on September 11, 2006. The Appeal Brief has now been reinstated.

3. Appellant does not wish to arrange an oral hearing for this appeal.

If the amount enclosed should be insufficient, please charge the remainder to Deposit Account No. 02-1653.

Respectfully Submitted,

Robert W. Becker, Reg. No. 26,255
for applicants

ROBERT W. BECKER & ASSOCIATES
707 State Hwy 333, Ste. B
Tijeras, New Mexico 87059-7507

Telephone: 505 286 3511
Telefax: 505 286 3524

RWB:rac

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 9, 2008.

Rosalie A. Centeno

Rosalie A. Centeno, Legal Assistant

In re Application of:	**John Greeson et al**
For:	Method and Mixture for Protecting Animals Against Pests
Filing Date:	9/11/2003
Application Number:	10/659,840
Attorney Docket Number:	2166.007
Group Art Unit:	1616
Examiner:	Neil Levy

APPELLANTS' APPEAL BRIEF

To: Mail Stop APPEAL BRIEFS-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Appellants respectfully submit this Appeal Brief with the Board of Patent Appeals and Interferences in response to the Examiner's final rejection. Appellants hereby request the Board to overrule the Examiner's rejections and to allow the rejected claims in the application.

TABLE OF CONTENTS

(1) REAL PARTY IN INTEREST

The real party in interest is Dairy Solutions LLC, the assignee of the above-identified application.

(2) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

(3) STATUS OF CLAIMS

Claims 1, 2, 4-14 and 16-21 are pending in the application.

Claim 3 and 15 have been cancelled.

Claims 1,2, 4-14 and 16-21 have been finally rejected and are being appealed.

The appealed claims are set forth in section (8).

(4) STATUS OF AMENDMENTS

In response to the final rejection dated 06/08/2007, a response was filed on September 4, 2007. In response to the Advisory Action dated 09/14/2007, a Notice of Appeal was reinstated on October 9, 2007.

(5) SUMMARY OF THE CLAIMED SUBJECT MATTER

A. Claim 1 defines a mixture for application on an animal to provide barrier protection against pests (specification, page 1, lines 10-14), comprising a carrier or combination of carriers (specification, page 4, lines 18 and 19) that includes an oil-based carrier (specification, page 5, lines 19-24, and the Examples on pages 9 and 10; original, now cancelled, claim 3) that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S. (specification, page 4, lines 19 and 20, and original claim 1); and at least one pesticide with said carrier or combination of carriers, wherein said pesticide is adapted to act non-systemically relative to a host animal (specification, page 4, line 21, to page 5, line 2, and original claim 1).

B. Dependent claim 2 includes the features of claim 1 (see above) plus the feature wherein said mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension (specification, page 5, lines 2-7).

C. Dependent claim 9 includes the features of claim 1 (see above) plus the feature wherein said viscosity is greater than 120 S.U.S. (specification, page 5, lines 17 and 18).

D. Dependent claim 10 includes the features of claims 1 and 9 (see above) plus the feature wherein said viscosity is 300 to 650 S.U.S. (specification, page 5, line 18, and original claim 10).

E. Dependent claim 11 includes the features of claim 1 (see above) and further includes a volatile compound that is soluble in or mixable with said carrier or combination of carriers, wherein upon application to an animal said volatile compound evaporates to such an extent that said absolute or resultant viscosity is obtained (specification, page 8, line 19, to page 9, line 3; original claim 11).

F. Dependent claim 20 includes the features of claims 1 and 9 (see above) plus the feature that the viscosity is greater than 220 S.U.S. (specification, page 6, line 1).

G. Independent claim 12 defines a method of protecting an animal against pests (specification, page 1, lines 13 and 14), and includes the steps of providing a carrier, or combination of carriers (specification, page 4, lines 18 and 19), that includes an oil-based carrier (specification, page 5, lines 19-24; the Examples on pages 9 and 10; original, now cancelled, claim 3) that at least after an application has an absolute or resultant viscosity of from 100 to 1200 S.U.S. (specification, page 4, lines 19 and 20, and original claim 12); mixing at least one of a non-systemically operating insecticide, ectoparasitide, varicide, insect or other arthropod growth regulator (IGR), bacteriacide, and bacteriostatic compound with

said carrier to provide a mixture (specification, page 4, line 21, to page 5, line 2); and applying said mixture to an animal (specification, page 5, lines 10 and 11).

H. Dependent claim 13 includes the features of claim 12 (see above) plus the feature wherein said mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension (specification, page 5, lines 2-7).

I. Dependent claim 16 includes the features of claim 12 (see above) plus the feature wherein said viscosity is greater than 120 S.U.S. (specification, page 5, lines 17 and 18).

J. Dependent claim 17 includes the features of claim 16 (see above) plus the feature wherein said viscosity is 300 to 650 S.U.S. (specification, page 5, line 18, and original claim 17).

K. Dependent claim 19 includes the features of claim 12 (see above) and further includes the step of adding to said carrier or combination of carriers a volatile compound that is soluble in or mixable therewith, wherein upon an application to an animal, said volatile compound evaporates to such an extent that said absolute or resultant viscosity is obtained (specification, page 8, line 19, to page 9, line 3; original claim 19).

L. Dependent claim 21 includes the features of claims 12 and 16 (see above) plus the feature that the viscosity is greater than 220 S.U.S. (specification, page 6, line 1).

(6) GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 2, 4-14 and 16-21 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The rejection is retained as to the non-systemic criticality; as to the new matter of claims 20, 21, there is no support for a viscosity without limitation at page 6, contrary to attorney's argument.

B. Claims 1, 2, 4, 5, 9 and 10 stand rejected under 35 U.S.C. 102(b) as unpatentable over US patent number 4,176,076, to Waldstein.

C. Claims 1, 2, 4, 5, 7 and 8 stand rejected under 35 U.S.C. 102(b) or, in the alternative, under 35 U.S.C. 103(a), as unpatentable over US patent number 2,988,473 to Mallis.

D. Claims 1, 2, 5, and 7-11 stand rejected under 35 U.S.C 102(b) or in the alternative, under 35 U.S.C. 103(a), as being unpatentable over US patent 4,316,914 to Coffee.

E. Claims 1, 5, 9, 10, 12, 14, 16 and 17 stand rejected under 35 U.S.C. 102(b) as being unpatentable over US patent number 6,455,504 to Lewer.

(7) ARGUMENTS

A. Claim 1,2, 4-14 and 16-21 should not be rejected under 35 U.S.C. 112.

1) The Examiner has stated that "[t]he rejection is retained as to the non-systemic criticality". As stated on page 4 of the specification of the instant application, the object of the invention is to provide an effective animal barrier protection mixture that remains on surface. The criticality of providing a mixture that remains on surface, in other words, one that acts non-systemically, is twofold. On the one hand, the mixture of the present application avoids the drawback of transdermal absorption of the active ingredient into the animal, and hence possibly into the human food chain (see page 3 of appellants' specification, lines 13 and 14, as well as page 6, lines 16-22). Furthermore, the mixture as defined in appellants' claims 1 and 12 will provide for contact with all pests of concern, thus avoiding another drawback of the prior art, namely being able to effectively deal

with pests that are non blood sucking (see, for example, the discussion on page 3 of appellants' specification, lines 7-12, and page 6, lines 6-16, which specifically states the criticality of the non-systemic action of appellants' mixture). In view of the foregoing, it is respectfully submitted that appellants' have more than adequately presented the criticality of providing a mixture where the pesticide acts non-systemically, and appellants' request that the Board reverse this rejection of the Examiner.

2) The Examiner has also stated that "[t]he rejection is retained ...as to the new matter of claims 20, 21" since "there is no support for a viscosity without limitation". However, appellants respectfully submit that claims 1 and 12, upon which claims 20 and 21 respectively depend through claims 9 and 16, do in fact contain an upper limit for the viscosity, namely 1200 S.U.S. Claims 20 and 21 merely change the lower limit to 220 S.U.S. Thus, claims 20 and 21 require a lower limit that is greater than 220 S.U.S. while retaining the upper limit of claims 1 and 12 of 1200 S.U.S. Therefore, appellants respectfully request that the Board also reverse this rejection of the Examiner.

B. Claim 1, 2, 4, 5, 9 and 10 are patentable under 35 U.S.C. 102(b) over US patent 4,176,076 to Waldstein.

The Examiner has finally rejected independent claim 1 as well as dependent claims 2, 4, 5, 9 and 10 over US patent number 4,176,076 to Waldstein. Applellants respectfully traverse this rejection because the cited reference does not teach each and every element as set forth in appellants' claims, and certainly not in as complete detail as is contained in the claims (see MPEP 2131). Accordingly, appellants respectfully urge the Board to overrule the rejection of claims 1, 2, 4, 5, 9 and 10.

1) Appellants' mixture for application on an animal, to provide barrier protection against pests, as defined in claim 1 requires at least one pesticide with the carrier or combination of carriers, wherein the pesticide is adapted to act non-systemically relative to a host animal. This ability of the pesticide to act non-systemically relative to the host animal is brought about by the claimed viscosity of the carrier or combination of carriers, as a result of which the pesticide essentially does not reach the skin, i.e. resides on top of the animal's hair rather than below the hair and on the skin of the animal, in other words, does not act systemically (see page 6 of the specification of the instant application, lines 14 – 18, for this definition).

This non-systemic action of the pesticide due to appellants' claimed carrier viscosity is a critical limitation of claim 1. Appellants furthermore respectfully submit that this non-systemic action of the pesticide relative to a host animal is a valid functional limitation pursuant to MPEP 2173.05(g),

which indicates that a functional limitation is often used "to define a particular capability or purpose" and that such a functional limitation "must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to the person of ordinary skill in the pertinent art". It is respectfully submitted that the Waldstein reference provides absolutely no teaching or suggestion for a pesticide, and in particular a pesticide that is "adapted to act non-systemically relative to a host animal", as required by appellants' claim 1. Thus, Waldstein does not teach each and every element of appellants' claim 1 and certainly does not show the identical invention "in as complete detail as is contained in the ...claim". Furthermore, the rust inhibitor of Waldstein is adapted to be applied to a ferrous rustable surface, and not to an animal, as required by appellants' claim 1. This contrast is emphasized in column 2 of Waldstein, lines 51-58.

In view of the foregoing, appellants respectfully submit that claim 1, as presented herein, is patentable over Waldstein under 35 U.S.C. 102 (b) for at least the foregoing reasons. Claims 4 and 5 depend directly from claim 1 and should therefore also be patentable.

2) The Examiner has also rejected dependent claim 2, which is directly dependent upon claim 1. Claim 1 was discussed in detail in paragraph 1) above. Therefore, since claim 2 is directly dependent upon

claim 1, it is respectfully submitted that claim 2 should be patentable as well.

Claim 2 requires that the mixture contain essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. There is no teaching or suggestion in Waldstein of a mixture for application on an animal to provide barrier protection against pests, wherein the mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. Thus, Waldstein can in no way teach or suggest the features of appellants' claim 2, and the Board is requested to reverse the Examiner's rejection of claim 2.

3) The Examiner has also rejected dependent claim 9, which is directly dependent upon claim 1. Therefore, claim 9 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 9 further limits the viscosity to being greater than 120 S.U.S. There is no teaching or suggestion in Waldstein of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is greater than 120 S.U.S. Thus, Waldstein can in no way teach or suggest the feature of appellants' claim 9, and the Board is requested to also reverse the Examiner's rejection of claim 9.

4) The Examiner has also rejected dependent claim 10, which is indirectly dependent upon claim 1. Thus, claim 10 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 10 further limits the viscosity range by requiring that the viscosity be 300 to 650 S.U.S. There is no teaching or suggestion in Waldstein of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is 300 to 650 S.U.S. Thus, Waldstein can in no way teach or suggest the feature of appellants' claim 10, and the Board is requested to also reverse the Examiner's rejection of claim 10.

C. Claims 1, 2, 4, 5, 7 and 8 are patentable under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) over US patent 2,988,473 to Mallis.

The Examiner has finally rejected independent claim 1 as well as dependent claims 2, 4, 5, 7 and 8 over US patent 2,988,473 to Mallis. Appellants respectfully traverse this rejection because the cited reference does not teach each and every element as set forth in appellants' claims and certainly not in as complete detail as is contained in the claims. Accordingly, appellants respectfully urge the Board to overrule the rejection of claims 1, 2, 4, 5, 7 and 8.

1) Appellants' mixture for application on an animal, to provide barrier protection against pests, as defined in claim 1 comprises a carrier or combination of carriers that includes an oil-based carrier and that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S., and at least one pesticide with the carrier or combination of carriers wherein the pesticide is adapted to act non-systemically relative to a host animal.

With regard to the Mallis reference, the V-oil carrier cited by the Examiner is for cockroaches, which are not found on animals. Furthermore, the viscosity indicated for the only livestock application given by Mallis (see column 3, line 32), namely 43.2 S.U.S., actually teaches away from appellants' required viscosity of 100 to 1200 S.U.S. in that it is far lower than appellants' required viscosity range. Thus, appellants respectfully submit that claim 1, as presented herein, is patentable over Mallis under 35 U.S.C. 102 (b) and 35 U.S.C. 103(a) for at least the foregoing reasons. Claims 4, 5, 7 and 8 depend either directly or indirectly from claim 1 and should therefore also be patentable.

2) The Examiner has also rejected dependent claim 2, which is directly dependent upon claim 1. Claim 1 was discussed in detail in paragraph 1) above. Therefore, since claim 2 is directly dependent upon

claim 1, it is respectfully submitted that claim 2 should be patentable as well.

Claim 2 requires that the mixture contain essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. There is no teaching or suggestion in Mallis of a mixture for application on an animal to provide barrier protection against pests, wherein the mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. Thus, Mallis can in no way teach or suggest the features of appellants' claim 2, and the Board is requested to reverse the Examiner's rejection of claim 2.

D. Claims 1, 2, 5 and 7-11 are patentable under 35 U.S.C. 102 (b) and 35 U.S.C. 103 (a) over US Patent 4,316,914 to Coffee.

The Examiner has finally rejected independent claim 1 as well as dependent claims 2, 5, 7-11 over US patent 4,316,914 to Coffee. Appellants respectfully traverse this reference because the cited reference does not teach each and every element as set forth in appellants' claims and certainly does not show the identical invention in as complete detail as is contained in appellants' claims. Accordingly, appellants respectfully urge the Board to overrule the rejection of claim 1, 2, 5 and 7-11.

1) Appellants' mixture for application on an animal, to provide barrier protection against pests, as defined in claim 1 comprises a carrier or combination of carriers that includes an oil-based carrier and that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S., and at least one pesticide with the carrier or combination of carriers, wherein the pesticide is adapted to act non-systemically relative to a host animal.

With regard to the electrostatically sprayable insecticidal formulation of Coffee, those of skill in the art recognize that an electrostatic application is not suitable for application to animals. This is recognized by Coffee as well, which in claim 1 states that the electrostatically sprayable formulation is suitable "to spray plants". Thus, Coffee in no way teaches or suggests appellants' mixture for application on an animal, to provide barrier protection against pests, as defined in claim 1, so that appellants respectfully submit that claim 1, as presented herein, is patentable over Coffee under 35 U.S.C. 102(b) and 35 U.S.C. 103 (a). Claims 5, 7 and 8 depend either directly or indirectly from claim 1 and should therefore also be patentable.

2) The Examiner has also rejected dependent claim 2, which is directly dependent upon claim 1. Claim 1 was discussed in detail in paragraph 1) above. Therefore, since claim 2 is directly dependent upon

claim 1, it is respectfully submitted that claim 2 should be patentable as well.

Claim 2 requires that the mixture contain essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. There is no teaching or suggestion in Coffee of a mixture for application on an animal to provide barrier protection against pests, wherein the mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension. Thus, Coffee can in no way teach or suggest the features of appellants' claim 2, and the Board is requested to reverse the Examiner's rejection of claim 2.

3) The Examiner has also rejected dependent claim 9, which is directly dependent upon claim 1. Therefore, claim 9 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 9 further limits the viscosity to being greater than 120 S.U.S. There is no teaching or suggestion in Coffee of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is greater than 120 S.U.S. Thus, Coffee can in no way teach or suggest the feature of appellants' claim 9, and the Board is requested to also reverse the Examiner's rejection of claim 9.

4) The Examiner has also rejected dependent claim 10, which is indirectly dependent upon claim 1. Thus, claim 10 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 10 further limits the viscosity range by requiring that the viscosity be 300 to 650 S.U.S. There is no teaching or suggestion in Coffee of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is 300 to 650 S.U.S. Thus, Coffee can in no way teach or suggest the feature of appellants' claim 10, and the Board is requested to also reverse the Examiner's rejection of claim 10.

5) The Examiner has also rejected dependent claim 11, which is dependent upon claim 1 and should, at least for the reasons discussed above in section 1), also be patentable.

Claim 11 requires that the mixture further include a volatile compound that is soluble in or mixable with the carrier or combination of carriers, wherein upon application to an animal the volatile compound evaporates to such an extent that the absolute or resultant viscosity of claim 1 is obtained. There is no teaching or suggestion in Coffee for a mixture for application on an animal, to provide barrier protection against pests, wherein the mixture includes the volatile compound required by claim 11. Thus,

Coffee can in no way teach or suggest the features of appellants' claim 11, and the Board is requested to also reverse the Examiner's rejection of claim 11.

E. Claims 1, 5, 9, 10, 12, 14, 16 and 17 are patentable under 35 U.S.C. 102 (b) over US patent number 6,455,504 to Lewer.

The Examiner has finally rejected independent claims 1 and 12, as well as dependent claims 5, 9, 10, 14, 16 and 17, over US patent 6,455,504 to Lewer. Appellants respectfully traverse this rejection because the cited reference does not teach each and every element as set forth in Appellants' claims, and certainly does not show the identical invention in as complete detail as is contained in appellants' claims. Accordingly, appellants respectfully urge the Board to overrule the rejection of claims 1, 5, 9, 10, 12, 14, 16 and 17.

1) Appellants' mixture for application on an animal, to provide barrier protection against pests, as defined in claim 1 comprises a carrier or combination of carriers that includes an oil-based carrier and that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S., and at least one pesticide with the carrier or combination of carriers, wherein the pesticide is adapted to act non-systemically relative to a host animal.

With regard to the Lewer reference, since the cited spinosyns are not soluble in oil, Lewer requires the use of silicones. However, silicones are not oil-based carriers, in distinct contrast to the requirement of appellants' claim 1. In addition, there is no teaching or suggestion in Lewer of appellants' viscosity range, and certainly not of the criticality thereof.

In view of the foregoing, appellants respectfully submit that claim 1, as presented herein, is patentable over Lewer under 35 U.S.C. 102(b) for at least the foregoing reasons. Claim 5 depends directly from claim 1 and should therefore also be patentable.

2) The Examiner has also rejected dependent claim 9, which is directly dependent upon claim 1. Therefore, claim 9 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 9 further limits the viscosity to being greater than 120 S.U.S. There is no teaching or suggestion in Lewer of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is greater than 120 S.U.S. Thus, Lewer can in no way teach or suggest the feature of appellants' claim 9, and the Board is requested to also reverse the Examiner's rejection of claim 9.

3) The Examiner has also rejected dependent claim 10, which is indirectly dependent upon claim 1. Thus, claim 10 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 10 further limits the viscosity range by requiring that the viscosity be 300 to 650 S.U.S. There is no teaching or suggestion in Lewer of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is 300 to 650 S.U.S. Thus, Lewer can in no way teach or suggest the feature of appellants' claim 10, and the Board is requested to also reverse the Examiner's rejection of claim 10.

4) Appellants' claim 12 defines a method of protecting an animal against pests, and includes the steps of providing a carrier, or combination of carriers, that includes an oil-based carrier and that at least after an application has an absolute or resultant viscosity of from 100 to 1200 S.U.S; mixing at least one of a non-systemically operating insecticide, ectoparasitide, viricide, insect or other arthropod growth regulator (IGR), bacteriacide, and bacteriostatic compound with said carrier to provide a mixture; and applying said mixture to an animal.

With regard to the Lewer reference, since the cited spinosyns are not soluble in oil, Lewer requires the use of silicones. However, silicones are

not oil-based carriers, in distinct contrast to the requirement of appellants' claim 1. In addition, there is no teaching or suggestion in Lewer of appellants' viscosity range, and certainly not of the criticality thereof.

In view of the foregoing, appellants respectfully submit that claim 12, as presented herein, is patentable over Lewer under 35 USC 102(b) for at least the foregoing reasons. Claim 14 depends directly from claim 12 and should therefore also be patentable.

5) The Examiner has also rejected dependent claim 16, which is directly dependent upon claim 12. Therefore, claim 16 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 16 further limits the viscosity to being greater than 120 S.U.S. There is no teaching or suggestion in Lewer of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is greater than 120 S.U.S. Thus, Lewer can in no way teach or suggest the feature of appellants' claim 16, and the Board is requested to also reverse the Examiner's rejection of claim 16.

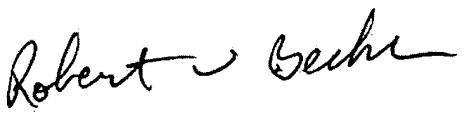
6) The Examiner has also rejected dependent claim 17, which is indirectly dependent upon claim 12. Thus, claim 17 should, at least for the reasons discussed above in section 1), also be patentable.

Appellants' claim 17 further limits the viscosity range by requiring that the viscosity be 300 to 650 S.U.S. There is no teaching or suggestion in Lewer of a mixture for application on an animal, to provide barrier protection against pests, wherein the viscosity is 300 to 650 S.U.S. Thus, Lewer can in no way teach or suggest the feature of appellants' claim 17, and the Board is requested to also reverse the Examiner's rejection of claim 17.

Conclusion

In view of the foregoing, appellants respectfully request that the Board of Patent Appeals and Interferences overrule the final rejection of claims 1,2, 4-14 and 16-21 and hold that these claims are allowable.

Respectfully Submitted,



Robert W. Becker, Reg. No. 26,255
Attorney for Applicant

Robert W. Becker & Associates
707 Highway 333 East, Suite B
Tijeras, NM 87059

Telephone: (505) 286-3511
Facsimile: (505) 286-3524

RWB:rac

(8) Claims Appendix

1. A mixture for application on an animal, to provide barrier protection against pests, comprising:

a carrier or combination of carriers that includes an oil-based carrier and that at least after application has an absolute or resultant viscosity of from 100 to 1200 S.U.S.; and

at least one pesticide with said carrier or combination of carriers, wherein said pesticide is adapted to act non-systemically relative to a host animal.

2. A mixture according to claim 1, wherein said mixture contains essentially no surfactant, emulsifier, or emulsifying agent, either in solution or in suspension.

4. A mixture according to claim 1, wherein said oil-based carrier is mineral oil.

5. A mixture according to claim 1, wherein said carrier or combination of carriers is inert relative to said pesticide.

6. A mixture according to claim 1, that further includes a compound that has at least one of the properties of being light reflective, and ultraviolet blocking or absorptive.

7. A mixture according to claim 1, wherein said at least one pesticide is selected from the group consisting of pyrethroids and organophosphates.

8. A mixture according to claim 7, wherein said at least one pesticide is permethrin or pyrethrin.

9. A mixture according to claim 1, wherein said viscosity is greater than 120 S.U.S.

10. A mixture according to claim 9, wherein said viscosity is 300 to 650 S.U.S.

11. A mixture according to claim 1, which further includes a volatile compound that is soluble in or miscible with said carrier or combination of carriers, wherein upon application to an animal said volatile compound evaporates to such an extent that said absolute or resultant viscosity is obtained.

12. A method of protecting an animal against pests, said method including the steps of:

providing a carrier, or combination of carriers, that includes an oil-based carrier and that at least after an application has an absolute or resultant viscosity of from 100 to 1200 S.U.S.;

mixing at least one of a non-systemically operating insecticide, ectoparasitide, viricide, insect or other arthropod growth regulator (IGR), bacteriacide, and bacteriostatic compound with said carrier to provide a mixture; and

applying said mixture to an animal.

13. A method according to claim 12, wherein said mixture contains essentially no surfactant, emulsifier or emulsifying agent, either in solution or in suspension.

14. A method according to claim 12, wherein said step of applying comprises misting, spraying or pouring said mixture directly onto an animal.

16. A method according to claim 12, wherein said viscosity is greater than 120 S.U.S.

17. A method according to claim 16, wherein said viscosity is 300 to 650 S.U.S.

18. A method according to claim 12, wherein said mixture further includes a compound that has at least one of the properties of being light reflective, and ultraviolet blocking or absorptive.

19. A method according to claim 12, which includes the further step of adding to said carrier or combination of carriers a volatile compound that is soluble in or miscible therewith, wherein upon application to an animal said volatile compound evaporates to such extent that said absolute or resultant viscosity is obtained.

20. A mixture according to claim 9, wherein said viscosity is greater than 220 S.U.S.

21. A method according to claim 16, wherein said viscosity is greater than 220 S.U.S.

(9) Evidence Appendix

None.

(10) Related Proceedings Appendix

None.